

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PEITION NO.1374 OF 2003

Essar Oil Ltd. Employees Provident Fund & Anr. ...Petitioners.

Versus

Regional Provident Fund Commissioner & Ors. ...Respondents.

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Mr. J.P. Cama i/b. RMG Law Assocaites for the Petitioners.

Mr. M. S. Karnik for the Respondents.

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**CORAM : DR. D.Y. CHANDRACHUD, J.**

August 17, 2006.

**P.C.:**

These proceedings under Article 226 of the Constitution have been instituted by the Petitioner before the Court in order to impugn the validity of an order dated 3<sup>rd</sup> April 2003, passed by the First Respondent withdrawing the relaxation that was granted under paragraph 79 of the Employees' Provident Fund Scheme, 1952.

2. The Second Petitioner, Essar Oil Ltd., is an establishment covered under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. The First Petitioner is a trust duly registered

and established under the provisions of the Act for the benefit of the employees of the Second Petitioner. An application for exemption from the provisions of the Employees' Provident Fund Scheme was made to the First Respondent on the ground that the benefits to which the employees of the Second Petitioner are entitled are not less beneficial than those available under the Scheme. On 10<sup>th</sup> December 1996 a relaxation came to be granted by the Regional Provident Fund Commissioner under para 79 of the Scheme on the application for exemption. The order of relaxation provided that until a decision is taken on the application for exemption, the Second Petitioner may not comply with the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 with effect from 2<sup>nd</sup> December 1996 subject to certain terms and conditions. One of the conditions was that the Board of Trustees shall invest the Provident Fund contribution in accordance with the pattern of investment prescribed by Government of India from time to time. The conditions of relaxation provided that the order may be withdrawn in the event of a breach of the conditions subject to which a relaxation was allowed or for any other sufficient cause.

3. The First Petitioner had made an investment of a face value of Rs.27 lakhs in Government of India bonds described as 40% GOI 2013 carrying interest at the rate of 12.4% per annum. The investment was made by the Trust through GILTEDGE Management Services Limited. An amount of Rs.35,84,940/- was remitted by the Trust to the broker which was inclusive of a premium of Rs.8,84,940/-. The broker by a communication dated 21<sup>st</sup> May 2002 informed the Trust that it was not in a position to deliver or to make payment as its Bank Accounts were frozen by the regulatory authorities. Copies of the correspondence exchanged between the Trust and the broker have been annexed to these proceedings.

4. A notice to show cause was issued by the First Respondent to the Second Petitioner recording that though the Board of Trustees of the Trust had paid an advance to the broker for the purchase of Government securities, the broker had failed to deliver the securities or to refund the consideration which had been paid. The Second Petitioner was accordingly called upon to make good the loss with

appropriate interest and to lodge a confirmation within a period of ten days. In the affidavit in reply that has been filed in these proceedings, it has been stated that the notice was issued in pursuance of an enquiry which came to be conducted by the officers of the First Respondent in regard to the investments made by the Board of Trustees. The notice to show cause was followed by a further notice dated 23<sup>rd</sup> October 2002. The Second Petitioner submitted its reply on 30<sup>th</sup> October 2002. A further reminder dated 4<sup>th</sup> February 2003 was sent by the First Respondent, noting that the lapse on the part of the Petitioners was a statutory offence under Section 14 of the Act. On 13<sup>th</sup> February 2003, the Second Petitioner reiterated the assurance that it would make good the loss as early as possible together with interest. On 3<sup>rd</sup> April 2003 the First Respondent passed an order cancelling the order of relaxation upon the failure of the Second Petitioner to restore the loss that had been caused to the Trust on account of non delivery of the securities of the value of Rs.27 lakhs.

5. At the stage of admission of the petition, a Learned Single

Judge of this Court by an order dated 14<sup>th</sup> July 2003 granted Rule and interim relief staying the operation of the order dated 3<sup>d</sup> April 2003 and injuncting the First Respondent from taking coercive steps against the Directors under Section 8-B of the Act, subject to the condition that the second Petitioner shall furnish a Bank Guarantee in the amount of Rs.35 lakhs. Subsequently, by an order dated 24<sup>th</sup> September 2003, the earlier order was modified at the request of the Second Petitioner. The modified order allowed the Second Petitioner to deposit an amount of Rs.35 lakhs with the First Petitioner within two weeks and there was a direction that upon such deposit being made, the First Petitioner shall invest the amount in a Nationalised Bank pending the disposal of the petition. At the final hearing of the petition, Counsel appearing on behalf of the Petitioner has stated before the Court that in pursuance of the interim directions issued by the Court, an amount of Rs.35 lakhs was deposited with the First Petitioner and that has been invested in the branch of the Bank of India at Bhulabhai Desai Road, Mumbai. The deposit was effected on 15<sup>th</sup> October 2003.

6. A chart has been placed on the record of this Court which reflects the following figures in regard to the interest that would have accrued on the securities, were they to be delivered at the material time:

|                                      |               |
|--------------------------------------|---------------|
| "1. Face value.                      | 2,700,000.00  |
| -2. Purchase price @ 132.50          | 3,577,500.00  |
| -3. Date of Purchase.                | 25-02-2002    |
| -4. Interest Rate                    | 12.40%        |
| -5. Interest Due Date                | 20/02 & 20/08 |
| -6. Interest Accrued from 25-02-2002 |               |
| to 30-06-2006                        | 1,453,950.00  |
| -7. Principal with interest as on    |               |
| 30-06-2006                           | 4,153,950.00" |

7. On the basis of the aforesaid chart which has been submitted before the Court, it emerges that if the investment in Government securities of a face value of Rs.27 lakhs had been effected as proposed, the interest that would have accrued thereon from 25<sup>th</sup> February 2002 to 30<sup>th</sup> June 2006 would have been

Rs.14,53,950/-. This calculation is not disputed by Learned Counsel for the Respondents. The total principal sum together with interest would, therefore, amount to Rs.41,53,950/-. Counsel appearing on behalf of the Petitioners stated that with a view to protect the interest of the Trust, the Second Petitioner is willing to make good any deficiency that would be left in the amount, together with accrued interest, that is now lying in the Bank of India so as to place the Trust in the same position in which it would have been, had the investment actually been made. The chart that has been submitted before the Court shows that the principal amount of Rs.35 lakhs together with accrued interest thereon in the Bank of India upto 30<sup>th</sup> June 2006 is Rs.40,48,237/-. A statement has been made before the Court on behalf of the Second Petitioner that the Company shall ensure that the loss which was sustained by the Trust on account of the failure of the broker would be made good; hence, in the event that there is any deficiency between the amount that is lying at the Bank at present and the amount that would have been earned had the amount of Rs.27 lakhs been invested in Government securities, that would be made good by the Second Petitioner within two weeks to the Trust.

This is fair and reasonable and commends itself for acceptance. Hence, the First Petitioner would now be at liberty to withdraw the amount that is lying in deposit with the Bank of India together with the accrued interest if any, thereon. Since the matter is satisfactorily resolved upon the Second Petitioner having complied with the interim directions of this Court and in terms of the assurance made before the Court as noted above, there is no reason why the relaxation should be withdrawn. The First Respondent would be at liberty, however, to ensure that the directions issued hereinabove are duly fulfilled by the Petitioner and the terms of the assurance given by the Second Petitioner are observed. In the circumstances, the impugned order dated 3<sup>rd</sup> April 2003 is quashed and set aside. The First Respondent will consider the application for exemption from the provisions of the Employees' Provident Fund Scheme in accordance with law. The petition is accordingly disposed of. There shall be no order as to costs.

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